IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 586 of 2007

Judgement reserved on:

Date of decision: 7.9.2007.

Pushpa Kumari **…..Petitioner- Appellant.**

Vs.

Inder Kumar & anr. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : **Mr. Dalip Sharma, Advocate.**

For the Respondents : **Mr. M.L.Chauhan, Addl. Advocate General, for respondent No.3.**

Kuldip Singh, Judge (Oral).

This an application by Smt. Pushpa Kumari, complainant for grant of leave to file an appeal against the judgement of acquittal, dated 15.6.2007, passed by learned Sub Divisional Judicial Magistrate, Chachiot at Gohar, Distt. Mandi, in police challan No. 300-I/04, 53-II/04. The applicant has submitted that the State has decided not to file any appeal against the impugned judgement, therefore, she being complainant has filed the application for grant of leave to file an appeal.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. The facts in brief are that complainant Pushpa Kumari on 3.6.2004 came to Police Post, Janjehli and reported that she was married to Inder Kumar on 11.3.2004 at Mahamaya Temple Sundernagar, her husband initially treated her properly but thereafter he started treating her with cruelty at the instigation of her mother- in-law Kala Devi. She has alleged that her husband used to beat her and her mother- in- law used to put sarcastic remarks for not bringing enough dowry. She had told this to her brother Tej Singh. On 1.6.2004, her brothers Inder Singh, Raghunath Singh, Jiwanand, Desh Raj and Tej Singh had inquired from Inder Singh accused and his father. Inder Singh admitted his mistake and assured that he would not repeat it in future.

3. On 2.6.2004, she was present in her room and at about 11.00 p.m. Inder Singh came in inebriated condition and asked her why her brothers had abused him. She advised him to sleep and to remain under control, however, her husband took out a knife from almirah and gave her blow with knife, which she tried to stop with her hand and as a result thereof, her ring finger got injured. She has alleged that her father-in-law and mother-in-law intervened. She left her matrimonial home at 5.00 a.m. FIR No. 86 of 2004, dated 3.6.2004, under Sections 498-A, 324, 323 IPC was registered. She was medically examined. After conclusion of the investigation, challan was put up against the accused. Inder Kumar was charged, under Sections 324, 498-A read with Section 34 IPC and Kala Kumari was charged under Sections 498-A read with Section 34 IPC. The learned Sub Divisional Judicial Magistrate acquitted both the

accused. The State having opted not to file the appeal, the application for leave to appeal has been filed by the complainant, as noticed above.

4. Heard and perused the record. PW 1 Pushpa Kumari has stated that on 2.6.2004 at about 11 p.m. her husband came in inebriated condition and asked her why her brothers have spoken foul words against him and why they have not given dowry and he would cut their heads. She advised him to live properly with her. On this, he took out a knife from almirah and after striping himself naked he put the knife on her neck and when she tried to save herself, her ring finger of left hand got injured. She raised cries and on this her father-in-law intervened and her husband threw the knife in the room. Her mother-in-law slept with her for some time. In cross-examination, she has stated that when she was hurt with knife, she continuously raised cries from 11.00 p.m. to 1.00 a.m. and when she got tired after crying, she fainted.

5. PW Tej Singh has stated that dispute between the complainant and her husband was compromised on 1.6.2004 in the Panchayat. On 3.6.2004 at about 6.00 a.m., complainant came to him holding a knife and told that the accused has beaten her. In cross- examination, he has admitted that his house is at a distance of 100 meters from the house of the accused. He has admitted that accused had good character and his mother never abused and gave beatings to complainant in his presence. PW 3 Raghunath Singh is the brother of complainant Pushpa Devi. In his examination-in-chief, he has supported the complainant. PW 7 ASI Rattan Singh (I.O.) has

stated that he had not associated any person from the neighbourhood of the accused, but self stated that he had inquired from some persons in the area, who told that they had no information about the incident. He has stated that during investigation, it was revealed that an attempt was made to compromise the matter, in which local Pradhan and members of the Panchayat had participated. He has stated that he did not inquire from the Pradhan of the Panchayat. PW 9 Dr. Hem Raj has stated that injury No. 1 could be caused by blunt weapon, injury No. 2 could be caused by sharp edged weapon. In cross-examination, he has admitted that injury No. 2 could be caused during cutting of grass with sickle and also while cutting vegetables in the kitchen. Injury No. 1 can be caused by falling on a hard surface.

6. DW 1 Lalit Kumar has stated that he remained Pradhan of the Panchayat from 2001 to 2006. He has stated that his house is at a distance of 200 meters from the house of the accused. He has deposed that on 1.6.2004, both the parties had meeting in which Pushpa Kumari and her brothers demanded Rs. 25,000,00/- . He did not receive any complaint from the complainant regarding her ill-treatment.

7. DW 3 Inder Singh has stated that he remained Up-Pradhan of the Gram Panchayat from 1995 to 2000. He has stated that so long the complainant resided at her matrimonial house, she was never ill treated nor he saw any ill-treatment made to her. The complainant never informed him that she was ill-treated.

8. The learned Sub Divisional Judicial Magistrate after appreciation of material on record has recorded a finding that the

case is fabricated one and the story putforth is a concocted one. He has observed that allegations have been made in a omnibus manner. He recorded a finding of acquittal. The State has accepted the finding of acquittal and has opted not to file an appeal. The learned Magistrate has taken a possible view from the material on record, hence the leave to appeal is rejected.

September 7, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**